

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON**

MARINE ELECTRIC SYSTEMS, INC,
Plaintiff/Counter-Defendant,

v.

Case No. 19-30167-CB
Hon. Michael P. Hatty

STERLING COMMERCIAL CREDIT, LLC,
Defendant/Counter-Plaintiff

and

W. EDWIN SMALL and GREG BOLLER,
Defendants

_____ /

**OPINION AND ORDER REGARDING STERLING COMMERCIAL
CREDIT, LLC’S MOTION TO STRIKE MARINE ELECTRIC
SYSTEMS, INC.’S AMENDED COMPLAINT**

At a session of the 44th Circuit Court,
Held in the City of Howell, Livingston County,
On the 4th day June, 2019

THIS MATTER COMES before the Court on Defendant’s Motion, Plaintiff having responded, and this Court being otherwise fully advised in the premises, Defendant’s Motion to Strike is DENIED and oral argument is dispensed with according to MCR 2.119(E)(3).

Plaintiff filed its complaint in this matter on January 4, 2019, naming Sterling Commercial Credit, LLC as the sole defendant. In lieu of filing an answer, Defendant filed a motion for summary disposition on February 20, 2019. Simultaneously, Defendant also filed a counterclaim against Plaintiff. On April 10, 2019, Plaintiff filed a First Amended Complaint, which named Mr. Small and Mr. Boller as additional defendants. Sterling Commercial Credit, LLC (hereinafter “Sterling”) then filed the instant motion, arguing, in part, that Plaintiff was time-barred under the MCR 2.118(A)(2) from amending its complaint without consent or leave

granted. Plaintiff responds by arguing no responsive pleading has been filed by Sterling, and thus it was permitted, under MCR 2.118(A)(1), to amend its complaint “once as a matter of course.”

MCR 2.118(A) provides, in pertinent part, that:

(1) A party may amend a pleading once as a matter of course within 14 days after being served with a responsive pleading by an adverse party, or within 14 days after serving the pleading if it does not require a responsive pleading.

(2) Except as provided in subrule (A)(1), a party may amend a pleading only by leave of the court or by written consent of the adverse party. Leave shall be freely given when justice so requires.

MCR 2.110(A) states that “the term ‘pleading’ includes only: (1) a complaint, (2) a cross-claim, (3) a counterclaim, (4) a third-party complaint, (5) an answer to a complaint, cross-claim, counterclaim, or third-party complaint, and (6) a reply to an answer. No other form of pleading is allowed.” Plaintiff is correct that a motion for summary disposition is not a responsive pleading. *City of Huntington Woods v Ajax Paving Industries, Inc.*, 179 Mich App 600, 601; 446 NW2d 331 (1989). Further, because a party is required by MCR 2.110(B)(2) to file a responsive pleading to a counterclaim, a counterclaim may not be a responsive pleading in and of itself. Thus, at the time Plaintiff filed its Amended Complaint, it was authorized to do so “once, as a matter of course,” because no responsive pleading had been filed. The parties’ remaining arguments, concerning futility, are moot and will not be addressed in this opinion.

Accordingly, Sterling’s motion is DENIED and oral argument scheduled for June 6, 2019, is CANCELLED.

IT IS SO ORDERED.

6-4-19
Date

/s/ Michael P. Hatty
Hon. Michael P. Hatty
Business Court Judge